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CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY: _____	DEPUTY _____

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Attorney for Plaintiff

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JANENE TRUJILLO, an individual

Plaintiff,

vs.

Civil Action No.: 3:19-cv-00056- MMD-CBC

CASE MANAGEMENT REPORT

ZIMMER, US, INC., a Delaware
Corporation, SYNVASIVE TECHNOLOGY,
a California Corporation, BIOMET
ORTHOPEDICS, LLC, an Indiana Limited
Liability Company, BIOMET, INC., an
Indiana Corporation and DOES I-X inclusive,

Defendants.

The above named Plaintiff, JANENE TRUJILLO, by and through her undersigned Counsel, and the above named Defendants, ZIMMER, US, INC., SYNVASIVE TECHNOLOGY, BIOMET ORTHOPEDICS, LLC, BIOMET, INC., ("ZIMMER") by and through their undersigned Counsel, hereby submit their Case Management Report as follows:

1. **Brief Description of the Case.** Plaintiff had surgery for a right hip replacement allegedly using a Zimmer device. Plaintiff alleges that the hip implant was defective causing Plaintiff to begin to experience significant pain and suffering including cobalt poisoning leading to metallosis and other adverse physical effects. Plaintiff underwent a second surgery to remove and replace the hip

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1 implant. Claims of strict products liability, breach of implied warranty, breach of express warranty,
2 negligence and negligent misrepresentation were brought by the Plaintiff. The allegations for strict
3 products liability include defective design, manufacturing and/or material defect and failure to warn.
4 Defendants have denied the material allegations and raised numerous affirmative defenses.

5 2. **Principal Factual and Legal Disputes.** At this time, it is anticipated that the factual issues
6 relate Plaintiff's course of treatment, including her implant and revision surgeries, the sale and
7 distribution of the subject hardware and the design and/or manufacturing process and materials used.
8 The principal legal issues are anticipated to be the claims of strict products liability, breach or
9 warranties, negligence based on allegations of defective design, manufacturing and/or materials,
10 failure to warn and defenses to the same.

11 3. **Jurisdiction.** This matter was originally filed in the Second Judicial District Court and was
12 removed by ZIMMER to this Court. Jurisdiction was premised upon diversity jurisdiction and
13 amount in controversy exceeding \$75,000.00 pursuant to 28 U.S.C. § 1332.

14 4. **Unserved Parties.** None at this time.

15 5. **Additional Parties.** None are anticipated at this time.

16 6. **Contemplated Motions.** At this time, there are no contemplated motions. Plaintiff and
17 ZIMMER anticipate moving for summary judgment on one or more causes of action or defenses at
18 the appropriate time, however, other motions may be brought by either party dependent on discovery
19 as well as other matters not anticipated at this time.

20 7. **Pending Motions.** There are no pending motions at this time.

21 8. **Related Cases.** The parties have no knowledge of any related cases pending at this time.

22 9. **Supplemental Discussion Necessary Discovery.**

23 a. The extent, nature, and location of discovery anticipated by the parties: The exact
24 extent, nature and extent of discovery is unknown at this time other than the
25 information provided in Section 13.

26 b. Suggested revisions, if any, to the discovery limitations imposed by the Federal Rules
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of Civil Procedure and LR 26(1)(b): See Section 13.

- c. The number of hours permitted for each deposition, unless extended by the parties: The parties initially agree that the maximum time for a deposition is seven (7) hours unless they agree to extend the time for any particular deposition given the circumstances.

10. **Issues Relating to the Disclosure or Discovery of Electronically Stored Information (“ESI”)**. None known at this time.

11. **Issues Related to Claims of Privilege or Work Product**. None known at this time.

12. **The Parties’ Fed.R.Civ.P. 26(a)(3) Disclosures and Objections Thereto**. The parties have agreed to exchange the disclosures by September 30, 2019. The parties have previously conducted their FRCP 26(f) meet and confer conference.

13. **Discovery Plan and Scheduling Order**. The deadlines set forth in the Stipulated Discovery Plan and Scheduling Order are more than the 180 day deadline provided by LR 26-1(e). The parties specifically request that the time deadlines set forth in LR 26-1(e) be extended. The discovery deadline has been set out on an extended basis to accommodate trial schedules of Counsel and extensive discovery involving technical products liability matters due to the nature of this case. The parties anticipate the need for several percipient and expert witnesses and their depositions, which may require travel, within the allotted time for discovery.

More specifically, ZIMMER anticipates that it will need to identify and retain experts to address alternative causation, as well as fact and expert witnesses qualified to evaluate Plaintiff’s specific claims for damages. ZIMMER will also seek information, through written discovery and document requests, of Plaintiff’s medical history, including, but not limited to, collection of her medical records, a laborious process that ZIMMER has already informally stated after conferring with Plaintiff’s Counsel. Additionally, ZIMMER may seek to depose Plaintiff’s treating physicians, in addition to her implanting and revising surgeons. ZIMMER requests the necessary time to complete these laborious case-specific discovery efforts.

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Dispositive Motions.

4. The last day to file and serve dispositive motions shall be not later than thirty (30) days after the discovery cut-off.

Pretrial Order.

5. The last day to file a Joint Pretrial Order (including FRCP26(a)(3) disclosures and any objections thereto) shall be thirty (30) days after the last day to file and serve dispositive motions. In the even dispositive motions are filed, the last day to file the Joint Pretrial Order shall be suspended until thirty (30) days after the decision for dispositive motions have been entered.

C. Additional Deadlines.

1. Pursuant to LR 26-3, the last day to file the Interim State Report is June 30, 2020.

2. In accordance with LR 26-4, applications to extend any date set by the discovery plan, scheduling order or other order must, in addition to satisfying the requirements of LR 6-1, be supported by a showing of good cause for the extension. All motions or stipulations to extend a deadline set forth in a discovery plan shall be received by the Court not later than twenty-one (21) days before the expiration of the subject deadline. A request made after the expiration of the subject deadline shall not be granted unless the movant demonstrates that the failure to set was the result of excusable neglect. Any motion or stipulation to extend the deadline or to reopen discovery shall include:

(a) A statement specifying the discovery completed;

(b) A specific description of the discovery that remains to be completed;

(c) The reasons why the deadline was not satisfied or the remaining discovery was not completed within the time limits set by the discovery plan;

(d) A proposed schedule for completing all discovery.

3. Discovery motions must be filed and heard before the applicable discovery cutoff date.

1 "THE DEADLINES SUBMITTED HEREIN ARE IN COMPLIANCE WITH LR 26-1(b)",
2 except for the "SPECIAL DISCOVERY SCHEDULING REQUESTED" for the reasons provided
3 herein.

4 IT IS FURTHER ORDERED THAT THE TRIAL IS SET FOR _____, _____ A.M.,
5 CALENDAR CALL IS SET FOR _____ A.M. in Reno Courtroom ____ before the Honorable
6 Miranda M. Du.

7 **Alternative Dispute Resolution.**

8 14. Given the early stages of the case and that no discovery has yet been undertaken, no
9 discussions for alternative dispute resolution have taken place. Therefore, prospects for settlement
10 are unknown at this time.

11 **Jury Trial.**

12 15. A jury trial has yet to be requested. The parties certify that they have considered consent
13 to trial by the Magistrate and use of the Short Trial Program.

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15 DATED this 4th day of September, 2019.

16
17 /s/Steven F. Bus
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23 Attorney for Plaintiff

24 /s/Theodore E. O'Reilly
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28 Los Angeles, CA 90025

Attorney for Defendants

IT IS SO ORDERED.



United States Magistrate Judge

DATED: 10/15/2019